THE SIERRA CLUB ET AL.

IBLA 88-364 Decided August 17, 1988

Appeal from a decision of Escalante (Utah) Resource Area Office, Bureau of Land Management, approving application for a right-of-way for a road, U 62280.

Dismissed as moot.

1. Rights-of-way: Revised Statutes Sec. 2477

   The existence of a right-of-way for a road across pub-lic lands under sec. 8 of the Act of July 26, 1866 (R.S. 2477) (repealed subject to valid existing rights) is a question of state law the adjudication of which is normally left to the state courts.

2. Rules of Practice: Appeals: Dismissal--Rules of Practice: Appeals: Standing to Appeal

   An appeal is ordinarily dismissed as moot where, as a result of events occurring after the appeal is filed (e.g., withdrawal of the application at issue), there is no effective relief which the Board can afford to the appellant.

APPEARANCES: Wayne G. Petty, Esq., Salt Lake City, Utah, for appellants; David K. Grayson, Esq., Assistant Regional Solicitor, Salt Lake City, Utah, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE GRANT

The Sierra Club, The Wilderness Society, Southern Utah Wilderness Alliance, and the National Parks and Conservation Association have appealed from a decision of the Escalante (Utah) Resource Area Office, Bureau of Land Management (BLM), dated March 8, 1988. In that decision, BLM approved an application by the Garfield County Commission for a road right-of-way pursuant to Title V of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. || 1761-1771 (1982). The purpose of the right-of-way was to realign the existing Hole-in-the-Rock road so as to eliminate some of the hazards such as blind curves and steep grades. BLM approved a right-of-way that would be 15.75 miles long and 66 feet wide, located along the existing Hole-in-the-Rock road from State Highway 12 to the Kane County line. After

review of an environmental assessment (EA) designated EA No. 87-67 and proposed mitigating measures, BLM determined the proposed action would not result in a significant impact to the human environment, and, therefore, required no environmental impact statement.

Subsequent to appellant's notice of appeal, Garfield County by letter dated April 18, 1988, withdrew its application for a right-of-way. In their statement of reasons for appeal, appellants state that, contingent upon confirmation of the county's withdrawal of its right-of-way application, they withdraw their appeal as to two of three issues. Those issues are (1) whether approval of the proposed right-of-way grant violated Title V of FLPMA and the applicable Departmental regulations, and (2) whether the EA was legally sufficient as a basis for BLM's finding of no significant impact.

Counsel for BLM has enclosed Garfield County's letter of withdrawal with its answer, confirming that the county has withdrawn its right-of-way application. Therefore, consistent with appellants' request, we dismiss the appeal with regard to the first two issues.

The third issue raised by appellants is that BLM erred in declaring the road a public highway under the Act of July 26, 1866, ch. 262, | 8, 14 Stat. 253 (R.S. 2477) (repealed, FLPMA, P.L. 94-579, | 706(a), 90 Stat. 2793) without establishing a factual basis for such a determination. According to appellants, BLM, in its EA and in a January 20, 1988, letter to the Sierra Club, expressly recognized and adopted the position that Garfield County possesses an R.S. 2477 right-of-way for the Hole-in-the-Rock road.

BLM replies that the state courts are the proper forum for adjudicating the existence of R.S. 2477 rights-of-way and that BLM's recognition of the existence of an R.S. 2477 right-of-way was done for administrative purposes only, and as such is not an adjudication of the existence of a right-of-way under R.S. 2477 and is not an appealable decision. BLM further contends that, in any case, it first recognized the Hole-in-the-Rock road as a R.S. 2477 public highway in 1970, in a Memorandum of Understanding between Garfield County and BLM. This appeal, made 18 years after the determination, is untimely, according to BLM.

[1] Section 8 of the Act of July 26, 1866, 43 U.S.C. | 932 (1970) (repealed by section 706(a) of FLPMA, 90 Stat. 2793 effective Oct. 21, 1976, subject to existing rights-of-way; see section 701 of FLPMA, 43 U.S.C. | 1701 note (1982)), provides that "[t]he right-of-way for construction of highways over public lands, not reserved for public uses, is hereby granted." The grant arises when a public highway over unreserved public lands is established pursuant to the laws of the jurisdiction where the land is located. Wilkenson v. Department of the Interior, 634 F. Supp. 1265, 1272 (D. Colo. 1986); Leo Titus, Sr., 89 IBLA 323, 335-36, 92 I.D. 578, 586 (1985).

[2] With certain exceptions inapplicable to this case, the Department has taken the position that the proper forum for adjudicating R.S. 2477 rights-of-way is the state courts in the state in which the road is located.

Leo Titus, Sr., supra at 337-38, 92 I.D. at 586-87. The question of whether a road is a public highway is a matter of state law. BLM has not purported to adjudicate the question of whether the Hole-in-the-Rock road is an R.S. 2477 right-of-way. Rather, BLM's reference to the Hole-in-the-Rock road as an R.S. 2477 right-of-way is a matter of administrative convenience. This administrative reference is not a decision appealable to this Board. Accordingly, the decision appealed from is properly considered moot in view of the withdrawal of the right-of-way application and the inability of the Board to afford appellants any relief. See Blackhawk Coal Co. (On Reconsideration), 92 IBLA 365, 93 I.D. 285 (1986).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the appeal is dismissed.

C. Randall Grant, Jr.
Administrative Judge

I concur:

Franklin D. Arness
Administrative Judge